

NEW INDIA ASSURANCE CO. LTD.

v.

MORRIS HEDSTROM LTD.

[SUPREME COURT, 1967 (Knox-Mawer J.), 27th January, 8th February]

Appellate Jurisdiction

Practice and procedure—non-suit in Magistrate's Court—power to enter—County Court Rules 1936 0.5 r.18—0.23 r.3(1)—Magistrates' Courts Ordinance (Cap. 5) s.47.

By virtue of section 47 of the Magistrates' Courts Ordinance, which provides (*inter alia*) that in default of rules made under that Ordinance the jurisdiction of magistrates shall be exercised in substantial conformity with the practice for the time being observed in the County Courts in England, a magistrate is empowered to enter a non-suit against a plaintiff in a civil action.

Appeal against order for entry of non-suit in the Magistrate's Court.

S. M. Koya and K. Govind for the appellant company.

G. M. G. Johnson for the respondent company.

KNOX-MAWER J.: [8th February, 1967]—

This is an appeal against a decision of the Magistrate's Court of the First Class Lautoka in its Civil Jurisdiction.

The appellant Company is the insurer of a quantity of rice consigned in bags to Messrs. Punja & Sons Ltd., Lautoka. The respondent Company is the shipper of this rice. The consignees accepted delivery of the whole of the consignment including nine damaged bags from which rice had been spilt. The appellant Company, as insurer, paid Messrs. Punja & Sons Ltd. the sum of £52.3.7 in respect of the spilt rice. By subrogation the appellant Company then began this action against the respondent to recover the loss.

Unfortunately, in the lower Court, the learned counsel for the appellant company closed his case without proving what rice had been lost or its value. The learned trial Magistrate therefore non-suited the appellant and awarded costs in favour of the respondent.

It is against the above decision that the appellant company has now appealed, but this Court can see no grounds for disturbing it. The Magistrates' Courts rules contain no express provision relating to a non-suit. However, Section 4 of the Magistrates' Courts Ordinance (Cap. 5) provides as follows:—

"The jurisdiction vested in magistrates shall be exercised (so far as regards practice and procedure) in the manner provided by this Ordinance and the Criminal Procedure Code, or by such rules and

A orders of court as may be made pursuant to this Ordinance and the Criminal Procedure Code, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction.”

B *Halsburys Laws of England Third Edition* Vol. 9 page 258 paragraph 601 states (citing the English County Court Rules Ord. 5, R.18)* that where the plaintiff does not prove his claim to the satisfaction of the Court it may either non-suit him or give judgment for the defendant. In non-suiting the appellant rather than giving judgment for the respondent the learned Magistrate did the best that could be done for the appellant in the circumstances, for after being non-suited a plaintiff may bring another action for the same, or substantially the same, cause of action.

C There being no merit in this appeal, it must be dismissed with costs in favour of the respondent.

Appeal dismissed.

* It would seem that the reference here intended is to Order 23 rule 3(1) — Ed.